



UNITED STATES
PATENT AND
TRADEMARK OFFICE

UNDER SECRETARY OF COMMERCE FOR INTELLECTUAL PROPERTY
AND DIRECTOR OF THE UNITED STATES PATENT AND TRADEMARK OFFICE
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CECIL T. POUNDERS, JR.,
15492 VILLAGE DRIVE
BILLOXI, MS 39532

#6

In re Application of :
Cecil Pounders :
Serial No.: 09/468,889 : WITHDRAWAL OF ABANDONMENT
Filed: December 22 1999 :

This is in response to applicant's petition under 37 CFR 1.181, filed February 5, 2003, to withdraw the abandonment of the above identified application based on timely filing of a reply.

A review of the file history shows that the examiner mailed an Office action to applicants on July 17, 2001, setting a three month shortened statutory period for reply. Applicants replied on October 16, 2001, as evidenced by the enclosed copy of the US Postal Service certified mail receipt, by filing an amendment and reply. The reply and amendment were not actually received by the Office until April 22, 2002, as evidenced by the enclosed copy of the stamped US Postal Service domestic return receipt. The Office mailed a Notice of Abandonment to applicant on August 28, 2002, for failure to timely file a response to the office action mailed July 17, 2001, since Applicant's response did not have a Certificate of Mailing or US Postal Service Express Mail mailing label to establish a date of reply. Applicant states he did not receive the Notice of Abandonment mailed August 28, 2002, due to the fact that he moved. Applicant learned via a telephone conversation with Examiner Bell on February 3, 2003 that his Application was abandoned. Applicant then facsimile transmitted this petition for withdrawal of abandonment on February 5, 2003, as evidenced by the Certificate of Facsimile transmission.

It is clear Applicant put forth an earnest effort to reply to the Office action in a timely manner. However, the Office does not recognize the date of deposit of Certified Mail as a date of response to an Office action. The Office accords any correspondence received a date of response on the date it is actually received in the Office mail room unless it has been filed by Express Mail which is accorded the date of actual deposit with the US Postal Service as its date of response. An applicant can, however, attach a Certificate of Mailing to any correspondence and the Office will accord the paper that date as the reply date even though the paper is not received within the time period for reply specified in the Office action. At the time applicant replied to the Office action mail from Mississippi would normally be expected to be received in the Office within 1-3 days. As applicant mailed the reply to the Office only one day prior to the due date for reply it is possible, although not necessarily likely, that the reply would have been received timely. However, at the time the reply was mailed a significant interruption of mail service to the Office occurred due to circumstances beyond its control

and applicant's reply was subjected to an irradiation procedure which delayed actual receipt in the Office by approximately six months. Due to the unusual circumstances surrounding this reply by a pro se applicant, the reply actually received April 22, 2002, but mailed October 16, 2001, is considered to be timely received. In consequence thereof, the Notice of Abandonment is withdrawn and the application restored to pending status with the mailing of this decision.

Attached to this Petition Decision is a copy of the Certificate of Mailing procedure which may be used to certify to the USPTO that a timely reply was filed. It is suggested that applicant use this procedure in future communications to the Office.

Applicant states that the submission received April 22, 2002, contains an address change. Both that paper and the copy of that paper filed with the petition have been carefully reviewed for such change. No indication of an address change can be found. Therefore, an Office generated form for changing your mailing address is enclosed which should be returned to the Office at your earliest opportunity.

Applicants' petition is **GRANTED**.

The amendment and reply submitted October 16, 2001, will be entered and the case will be forwarded to the Examiner.

Should there be any questions with respect to this decision, please contact William R. Dixon, Jr., by mail addressed to: Director, Technology Center 1600, PO Box 1450, Alexandria VA 22313-1450, or by telephone at (703)308-0254 or by facsimile transmission at (703) 308-7230.



John Doll
Director, Technology Center 1600